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Og-728

OGC Has Reviewed

Executive

30 January 1950

Legal Staff

Post Differential Payments

1. The basic memorandum from the Acting Chief, Finance Division, dated 13 January 1950, presents the question of payment of post differential during home leave and the incident travel. It states that "payment of the post differential is perhaps mandatory during periods of leave and transit time to eligible personnel under specific conditions", and it requests a legal determination of the right to deny such payments. In the attached opinion of the Comptroller General, B-89876, dated 30 December 1949, the Comptroller indicates the differential "may" be paid for leave within the tour of duty. We know of no specific ruling regarding the mandatory nature of the requirement, but we assume the language of Executive Order 10000 is sufficiently clear to remove any doubt. Section 104 provides that agencies shall pay the differential fixed therein, and Section 106 (3) of the same order states "payment shall be made for all periods of sick leave and annual leave taken during the period covered under item (1) above and for transit time authorized for purposes of leave so taken." (Our emphasis.) Item 1 stipulates that payment shall begin on arrival at the post, and shall stop on departure for purposes of separation, transfer, or detail. (Although the beginning and end of employment is used as the criterion for local recruitment.) As long as the employee leaves his foreign post for purposes of leave rather than "separation, transfer or detail" it seems clear that payment of the post differential during the transit time and leave is not only permissible, but obligatory.

2. It appears that the cases in which differential would be paid could be readily distinguished from those in which the Army disallowed payment. If the employee is actually returned for home leave with an honest intention by all hands that he will be returned to his original post, we think the right to payment is vested, subject to expiration when that intention is changed. There is no reason why a contract employee should be denied the right under those conditions, provided the contract is renewed when necessary to preserve the employee's status.

3. We concur in the comments of the Budget Officer, that the "good faith" and honest intentions of the employee may require close inspection before payment can be made in some cases. This could be equally applicable to the administrative superiors of the employee. Where time is of the essence, and we are dealing with a factor as intangible as a state of mind, abuses could easily develop if all parties did not maintain a critical and objective approach. (E.g., an employee returned to the same station at the end of his home leave would thus receive the post differential for the intervening period, and he could then be

transferred within a short period of time to another station outside the United States without loss of what would probably amount to a considerable increment. If the decision to transfer him to the second post had been reached before his return to the old post he would not be entitled to the post differential for the remainder of his home leave or for the returning transit time. In slight modification of the same case, the decision to make the transfer might have been reached at the beginning of the home leave but overt action postponed until the leave was completed. The hidden intention of the employee to resign upon his arrival in the United States has already been mentioned.

4. For the reasons indicated above, we believe that the employee has a vested right to payment of the post differential when he is otherwise entitled to it, but that administrative officers should be constantly aware of the dangers of unintentional abuse.

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cc: Subject
Chrono
Legal Decisions

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